

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

MONTVALE SURGICAL CENTER, LLC a/s/o  
various "PATIENTS",

Plaintiffs,

vs.

CONNECTICUT GENERAL LIFE INSURANCE  
COMPANY d/b/a CIGNA, CIGNA  
HEALTHCARE OF NEW JERSEY, INC.; ABC  
CORPS. (1-10)(said names being fictitious and  
unknown entities),

Defendants.

Civil Action No. 12-5257 (SRC)(CLW)

*Document electronically filed*

**CONSENT DISCOVERY  
CONFIDENTIALITY ORDER**

It appearing that discovery in the above-captioned action is likely to involve the disclosure by the parties of confidential business information; and it appearing further that legitimate interests warrant that such information remain confidential and that there is a substantial risk that clearly defined and serious injury or harm to the parties' legitimate proprietary interests will result should this Order not be entered; and the parties having agreed to keep materials produced in discovery confidential and to return or destroy such materials in accordance with the terms set forth in this Order; and the Court having reviewed the Certification of Kevin R. Reich, Esq. in support of the entry of this Order pursuant to Local Civil Rule 5.3(b)(2), and good cause having been shown for entry of this Order pursuant to Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure and Local Civil Rule 5.3;

IT IS on this 22 day of April, 2015, **ORDERED** as follows:

1. Any party to this litigation and any third-party shall have the right to designate as "Confidential" and subject to this Order any information, document, or thing, or portion of any

document or thing: (a) that contains trade secrets or competitively sensitive technical, marketing, financial, sales or other confidential business information, or (b) that contains private or confidential personal information, or (c) that contains information received in confidence from third parties, or (d) that the producing party otherwise believes in good faith to be entitled to protection under Rule 26(c)(1)(G) and Local Civil Rule 5.3. Any party to this litigation or any third party covered by this Order who produces or discloses any Confidential material, including without limitation any information, document, thing, interrogatory answer, admission, pleading, or testimony, shall mark the same with the following or similar legend: "CONFIDENTIAL" or "CONFIDENTIAL – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER" (hereinafter "Confidential").

2. All material designated Confidential shall be used by the receiving party solely for purposes of the prosecution or defense of this action, shall not be used by the receiving party for any business, commercial, competitive, personal or other purpose, and shall not be disclosed by the receiving party to anyone other than those individuals set forth in Paragraph 3 below unless and until the restrictions herein are removed either by written agreement of counsel for the parties or by order of the Court.

3. Confidential material and the contents of Confidential material may be disclosed only to the following individuals under the following conditions:

- (a) Outside counsel (herein defined as any attorney at the parties' outside law firms) and relevant in-house counsel for the parties;
- (b) Outside experts or consultants retained by outside counsel for purposes of this action, provided they have signed a non-disclosure agreement in the form attached hereto as Exhibit A;

- (c) Secretarial, paralegal, clerical, duplicating and data processing personnel of the foregoing;
  - (d) The Court and court personnel;
  - (e) Any deponent may be shown or examined on any information, document, or thing designated Confidential if it appears that the witness authored or received a copy of it, was involved in the subject matter described therein, or is employed by the party who produced the information, document, or thing, or if the producing party consents to such disclosure;
  - (f) Vendors retained by or for the parties to assist in preparing for pretrial discovery, trial and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as well as their staff, stenographic, and clerical employees whose duties and responsibilities require access to such materials; and
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- (g) The parties. In the case of parties that are corporations or other business entities, "party" shall mean executives who are required to participate in decisions with reference to this lawsuit and employees who are witnesses or potential witnesses in the matter.

4. With respect to any depositions that involve a disclosure of Confidential material of a party to this action, such party shall have until thirty (30) days after receipt of the deposition transcript within which to inform all other parties that portions of the transcript are to be designated Confidential, which period may be extended by agreement of the parties. During this period, no such deposition transcript shall be disclosed, and no individual attending such a deposition shall disclose the contents of the deposition, to any individual other than the individuals described in Paragraph 3. Upon being informed that certain portions of a deposition are to be designated as Confidential, all parties shall immediately cause each copy of the

transcript in its custody or control to be appropriately marked and limit disclosure of that transcript in accordance with Paragraph 3.

5. If counsel for a party receiving documents or information designated as Confidential hereunder objects to such designation of any or all of such items, the following procedure shall apply:

(a) Counsel for the objecting party shall serve on the designating party or third party a written objection to such designation, which shall describe with particularity the documents or information in question and shall state the grounds for objection. Counsel for the designating party or third party shall respond in writing to such objection within 14 days, and shall state with particularity the grounds for asserting that the document or information is Confidential. If no timely written response is made to the objection, the challenged designation will be deemed to be void. If the designating party or nonparty makes a timely response to such objection asserting the propriety of the designation, counsel shall then confer in good faith in an effort to resolve the dispute.

(b) If a dispute as to a Confidential designation of a document or item of information cannot be resolved by agreement, the parties shall submit the dispute to the Court for resolution using the joint letter protocol set forth in Paragraph 9 of the Pretrial Scheduling Order. The document or information that is the subject of the filing shall be treated as originally designated pending resolution of the dispute.

6. A party seeking to file any documents and/or things under seal shall file a motion pursuant to Local Civil Rule 5.3. A party intending to file such a motion shall contact chambers for instructions concerning its format. Designation under this Order alone is not a sufficient basis to seek to seal.

7. If the need arises during trial or at any hearing before the Court for a party to disclose Confidential material, it may do so only after giving notice to the producing party and as directed by the Court. Nothing herein constitutes a ruling that any information will be sealed or that an in camera presentation will be permitted.

8. If, at any time, any person, other than the party who originally produced Confidential material, receives a subpoena or other compulsory process by any court, administrative agency, legislative body, or other person or entity commanding production of such materials, the person to whom the subpoena or request is directed shall, except where prohibited by law, reasonably provide written notice to the party who produced such materials. The party who produced such materials then shall have the burden of defending against or objecting to such request. The person to whom the subpoena or request is directed shall not take any position concerning the propriety of such subpoena or request, or the discoverability of the information sought thereby. Unless otherwise ordered by a Court or required by a government subpoena, the person to whom the subpoena or request is directed shall comply with the request only if the party who produced the materials does not timely seek, or is unsuccessful in seeking, an order modifying or quashing the request.

9. To the extent consistent with applicable law, the inadvertent or unintentional disclosure of Confidential material that should have been but was not designated as such at the time it was disclosed shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information, document, or thing disclosed or as to any other material or information concerning the same or related subject matter. Such inadvertent or unintentional disclosure may be rectified by notifying counsel for all parties to whom the material was disclosed, in writing and within a reasonable time after disclosure, that the material should have been designated Confidential. Such notice shall constitute a valid designation of the information, document, or thing as Confidential under this Discovery Confidentiality Order.

10. When the inadvertent or mistaken disclosure of any information, document, or thing protected by privilege or work-product immunity is discovered by the producing party and

brought to the attention of the receiving party, the receiving party's treatment of such material shall be in accordance with Federal Rule of Civil Procedure 26(b)(5)(B). Such inadvertent or mistaken disclosure of such information, document, or thing shall not by itself constitute a waiver by the producing party of any claims of privilege or work-product immunity. However, nothing herein restricts the right of the receiving party to challenge the producing party's claim of privilege, if appropriate, within a reasonable time after receiving notice of the inadvertent or mistaken disclosure by filing an appropriate application with the Court using the joint letter protocol set forth in Paragraph 9 of the Pretrial Scheduling Order.

11. No information that is in the public domain or that is already known by the receiving party through proper means, or that is or becomes available to a party from a source other than the party asserting confidentiality that is rightfully in possession of such information on a non-confidential basis, shall be deemed or considered to be Confidential material under this Discovery Confidentiality Order.

12. No person, firm, corporation, or other entity subject to this Order shall give, show, disclose, make available, or communicate Confidential material to any person, firm, corporation, or other entity not expressly authorized by this Order to receive such Confidential material.

13. This Discovery Confidentiality Order is with reservation and without waiver of all rights, defenses, objections and privileges any party may possess and shall not deprive any party of its right to object to discovery by any other party on any permitted ground. This Discovery Confidentiality Order is being entered without prejudice to the right of any party to move the Court for modification or for relief from any of its terms.



14. This Discovery Confidentiality Order shall survive the termination of this action and shall remain in full force and effect unless modified by an order of this Court or by the written stipulation of the parties filed with the Court.

15. Upon final conclusion of this litigation, including any appeals, each party or other individual subject to the terms hereof shall be under an obligation to assemble and to return to the originating source all originals and unmarked copies of documents and things containing Confidential information and to destroy, should such source so request, all copies of such materials that contain and/or constitute attorney work product as well as excerpts, summaries and digests revealing such Confidential material; provided, however, that counsel may retain complete copies of all transcripts and pleadings including any exhibits attached thereto for archival purposes, subject to the provisions of this Discovery Confidentiality Order. To the extent a party requests the return of such material from the Court after the final conclusion of the litigation, including the exhaustion of all appeals therefrom and all related proceedings, the party shall file a motion seeking such relief.

CONSENTED TO BY:

**MASSOOD & BRONSNICK, LLC**  
50 Packanack Lake Road East  
Wayne, New Jersey 07470-6663  
(973) 696-1900

By: 

Andrew R. Bronsnick, Esq.  
*Attorneys for Plaintiff*  
Montvale Surgical Center, LLC

**GIBBONS P.C.**


One Gateway Center  
Newark, New Jersey 07102-5310  
(973) 596-4500

By: 

E. Evans Wohlforth, Jr., Esq.  
Kevin R. Reich, Esq.  
*Attorneys for Defendants*  
Connecticut General Life Insurance Company  
and Cigna Healthcare of New Jersey

IT IS SO ORDERED.

Dated: April 22, 2015



Hon. Cathy Waldor, U.S.M.J.

**EXHIBIT A**

**UNITED STATES DISTRICT COURT  
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various "PATIENTS",

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CONNECTICUT GENERAL LIFE INSURANCE  
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**AGREEMENT TO BE BOUND BY  
DISCOVERY CONFIDENTIALITY  
ORDER**

I, \_\_\_\_\_, being duly sworn, state that:

1. My address is \_\_\_\_\_.
2. My present employer is \_\_\_\_\_ and the address of my  
present employment is \_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_.
4. I have carefully read and understood the provisions of the Discovery  
Confidentiality Order in this case signed by the Court, and I will comply with all provisions of  
the Discovery Confidentiality Order which are incorporated by reference in this Agreement.
5. I will hold in confidence and not disclose to anyone not qualified under the  
Discovery Confidentiality Order any material designated Confidential and/or any words,  
summaries, abstracts, or indices of these materials or information disclosed to me.



6. I will limit use of Confidential material disclosed to me solely for purpose of this action.

7. No later than the final conclusion of the case, I will return all Confidential material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name